

REMARKS/ARGUMENTS

I. Status of Claims

Claims 1-36 were previously cancelled. Claims 42-54 were previously withdrawn and are now canceled. Upon entry of the present amendment, Claims 37-41 remain pending.

Claim 37 is amended to recite "the", to replace the previous recitation of "an." Claim 55 is cancelled. No new matter is introduced by the present amendment.

II. Claim Rejections

A. 35 U.S.C. § 112: First Paragraph

Claim 55 was rejected alleged failure to meet enablement requirement. Although Applicants respectfully traverse the rejection, to expedite prosecution, claim 55 has been cancelled. Applicants therefore request that the rejection be withdrawn.

B. 35 U.S.C. § 112: Second Paragraph

Claims 37-41 were rejected as allegedly being indefinite due to the recitation in Claim 37 of "An isolated polypeptide comprising *an* amino acid." As suggested by the Examiner, Claim 37 has been amended to recite "...comprising *the* amino acid." As such, Applicants submit the definiteness requirement has been met and respectfully request the withdrawal of the rejection for Claim 37 and dependent Claims 38-41.

C. Obviousness-Type Double Patenting

Claims 37-41 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of U.S. Patent No. 6,627,198. In addition, claims 37-41 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 62-66 of co-pending application USSN 10/193,002. Applicants respectfully request that the rejection be held in abeyance until the present application is allowed. Applicants will then submit an executed terminal disclaimer at the earliest opportunity.

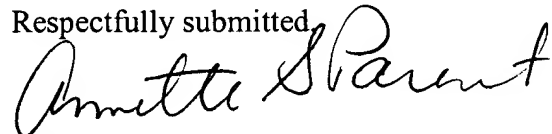
In submitting a terminal disclaimer, Applicants also respectfully remind the Examiner of the fact that terminal disclaimers are not an admission of the validity of a rejection. As clearly stated in MPEP 804.02, "the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. [In] *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991) ...the court indicated that the 'filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.'"

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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